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Session 3: Beyond NAFTA

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Theodore W. Kassinger[†]

Right. And it is with great pleasure that I am here today myself. Thank you, Henry, for that kind introduction and for inviting me. I am pleased, in part, because I have known for a very long time of the great work of the U.S.-Canada Institute, although I never have had an opportunity to participate in your programs. It is great to see you in action.

I should also note, since I see Dick Cunningham in the audience, that my participation today is partial fulfillment of a long-standing debt. Twenty – I won't estimate exactly how many years ago – but a very long time ago, I was negotiating with Dick to join Steptoe & Johnson as a young associate, when I had an offer suddenly to join the Legal Advisor's Office at the State Department.

So I called Dick up and asked, what should I do? Dick said, "Go to the State Department." So that's what I did, taking me on the path that has led to a lot of fun in Washington, great jobs, and eventually here today. So, thank you, Dick. This talk discharges my debt to you.

(Laughter.)

Actually, Dick called last fall to ask if I would talk at the Institute, and I said I would be very honored. But what, I asked, do you want me to talk about? He said we want you to talk about the future of trade remedies in U.S.-Canada relations. I told him that I didn't want to talk about that subject. I negotiated off and on with Henry and Dick, explaining that the Administration had a very exciting project we have been working on for more than two

[†] Theodore W. ("Ted") Kassinger served as Deputy Secretary of the U.S. Department of Commerce, a position to which he was nominated by President George W. Bush in February 2004 and appointed in July 2004. Previously, Mr. Kassinger was nominated and confirmed by the U.S. Senate as the General Counsel of the Department. He served in that capacity from May 2001 until assuming his current position. As Deputy Secretary, Mr. Kassinger serves as the Department's chief operating officer, with responsibility for the day-to-day management of its approximately \$5.8 billion budget, 13 operating units, and 40,000 employees. As Deputy Secretary, Mr. Kassinger supports Secretary of Commerce Donald L. Evans in carrying out these Department responsibilities and other Departmental policy and operational objectives. Prior to joining the Bush Administration Mr. Kassinger practiced law with the multinational law firm, Vinson & Elkins, L.L.P., from 1985 to 2001. His law practice focused mainly on the fields of international trade and business law, and transnational disputes resolution. Earlier in his career, Mr. Kassinger served as an attorney for the U.S. Senate Committee on Finance, the U.S. Department of State, and the U.S. International Trade Commission. A native of Atlanta, Georgia, Mr. Kassinger received his B.L.A. from the University of Georgia School of Environmental Design (1975) and his J.D. from the University of Georgia School of Law (1978).

years that I hoped would be announced soon and should be the subject of my talk. The invitation to speak indeed gave us special impetus to try to get that project wrapped up.

So with a great deal of effort, I managed to persuade the President, Prime Minister Martin, and President Fox to finally reach agreement, which they did just in time to propose and to get Henry to accept a somewhat different topic today, which I will now address.

I should add as a postscript to this tale, that as I was looking through my notebook of materials to prepare me for today's program, I turned to the table of contents for the program. I looked to make sure of when and where I was supposed to speak. I found that I am listed under a panel on "Canada and U.S. Approaches to Import Restrictions." That's next year's conference, I think.

Well, let me turn to what is a new and very exciting initiative of President Bush, the leaders of Canada and Mexico: That is the new Security and Prosperity Partnership of North America, known by the somewhat awkward acronym of SPP.¹

The three leaders announced the SPP in Waco, Texas, on March 23rd.² They envisioned the SPPs to be the new framework under which Canada, the United States, and Mexico will seek to create a safer and more prosperous North America over the coming years.

What I wish to do today is simply to convey to you a sense of what the SPP is all about. Let me first go over some of the context, which led Canada actually to propose what became the SPP, and then all three countries together to launch it.

For over two centuries, the United States and Canada have enjoyed an unusually close economic and security relationship. It is no accident that Canada and the United States have long been each other's largest trading partners. Each of the decades since World War II has spawned some signal event that accelerated the size and depth of those relationships.

Building on such precedents as the Auto Pact³ and the U.S.-Canada Free Trade Agreement,⁴ the two countries confidently embraced in the 1980s a higher order of economic integration, one with few border barriers to trade.⁵

¹ Fact Sheet: The Security and Prosperity Partnership of North America, (Mar. 23, 2005), available at <http://www.spp.gov/spp/factsheet.asp>.

² Press Release, Joint Statement by President Bush, President Fox, and Prime Minister Martin (Mar. 23, 2005), available at <http://www.whitehouse.gov/news/releases/2005/03/20050323-2.html>.

³ *The Auto Pact: En Route to Free Trade*, available at http://archives.cbc.ca/IDD-1-73-326/politics_economy/auto_pact/ (last visited Oct. 24, 2005).

⁴ Canada-United States Free Trade Agreement, Jan. 2, 1988, reprinted in 27 INT'L LEGAL MATERIALS 281 (1988).

⁵ William A. Niskanen, *Policy Analysis: Stumbling Toward a U.S.-Canada Free Trade*

The 1990s brought NAFTA, a truly continental vision of economic growth and cooperation. NAFTA's record is really remarkable.

U.S. goods exports to Mexico and Canada have surged 112 percent since 1994, reaching over \$300 billion dollars last year.⁶ U.S. merchandise exports to Canada climbed 89 percent over that time period to \$190 billion dollars,⁷ and our exports to Mexico were \$111 billion dollars.⁸

Exports to Canada and Mexico now account for about 37 percent of total U.S. exports.⁹ We trade \$1.9 billion dollars each day in goods with Mexico and Canada -¹⁰ \$1.4 million dollars a minute - a staggering amount of trade by any measure.

But now, in the first decade of the 21st century, it is important to continue to look at the evolving future of our continent. Unfortunately, the early defining moment of this decade occurred on September 11th, 2001. The tragic consequences of 9/11 included a severe economic blow that was felt across all three countries. The 9/11 attacks focused unprecedented government attention to the inextricable links between homeland and economic security. One immediate response to these twin concerns was the Smart Border Accord¹¹ that has proved so successful in strengthening U.S.-Canada border security without significantly impeding cross border trade.

And looking south, the United States, Canada, and Mexico have taken other, but equally innovative, approaches to economic security and humanitarian concerns arising from Mexico's different level of development. Through the Partnership for Prosperity¹² (P4P) and the Canada-Mexico partnership, our countries have sought to create greater opportunities in Mexico, particularly in its poorest regions.

Together these various programs are doing much to better the lives of all of our citizens. Yet, those doing business across North America continue to

Agreement, THE CATO INSTITUTE, June 18, 1987, available at <http://www.cato.org/pubs/pas/pa088es.html>.

⁶ U.S. Trade Balance With Canada, available at <http://www.census.gov/foreign-trade/balance/c1220.html#2004> (last visited Oct. 24, 2005) [hereinafter U.S. Trade Balance With Canada]; U.S. Census Bureau, Foreign Trade Statistics, available at <http://www.census.gov/foreign-trade/balance/c2010.html#2004> (last visited Oct. 24, 2005) [hereinafter U.S. Trade Balance With Mexico].

⁷ U.S. Trade Balance With Canada, *supra* note 7.

⁸ U.S. Trade Balance With Mexico, *supra* note 7.

⁹ The World Factbook, Central Intelligence Agency, available at <http://www.cia.gov/cia/publications/factbook/geos/us.html> (last visited Oct. 24, 2005).

¹⁰ U.S. Trade Balance With Canada, *supra* note 7; U.S. Trade Balance With Mexico, *supra* note 7.

¹¹ Holli Chmela, *Canadian Ambassador Outlines Security*, THE WASH. TIMES, Dec. 8, 2004, available at <http://washingtontimes.com/upi-breaking/20041207-040703-8189r.htm>.

¹² Press Release, U.S. Dept. of State, U.S.-Mexico Partnership for Prosperity (Mar. 22, 2002), available at <http://www.state.gov/p/wha/rls/fs/8919.htm>.

encounter significant inefficiencies. If our three countries were isolated from the global economy and content to confine most economic activities within our borders, then perhaps it would be acceptable to ignore the current level of additional transaction costs that occur in our intercontinental trade.

But the North American community is not an island amidst the global economic and political change that is occurring in this century. The surrounding oceans afford protection neither from terrorists, nor from foreign entrepreneurs who are relentlessly pursuing ways to innovate, to manufacture, and to sell things better, faster and cheaper than Canadians, Americans, and Mexicans.

The \$163 billion dollar trade deficit that the United States incurred with China last year¹³ is a wakeup call, but not for protectionism. It is, rather, a call to take all reasonable means to ensure that North America is the safest and best place in the globe to live and to do business.

For more than two years, senior officials in Canada, the United States, and Mexico have been examining the state of the North American economic platform in light of the post 9/11 global environment.¹⁴ The announcement made by the three leaders on March 23rd reflects their conclusion that it is time to move beyond NAFTA to identify and, where possible, to facilitate cross-border business in North America.

At the same time, extensive security cooperation over the past four years has moved us far towards the possibility of creating a common security perimeter around our North America continent. The leaders have not called for a common market, but they launched an open-ended search for practical means to make business within our continent seamless.

Let me now turn to the scope of the new security and prosperity initiative. The SPP is built around the two complementary objectives of greater security and prosperity. Organizationally, in the securities sphere, we will aim towards a common security strategy, focusing on securing North America from external threats, preventing and responding to threats within North America, and streamlining the secure and efficient movement of legitimate and low risk traffic across our shared borders.

In the prosperity sphere, the countries will focus on improving productivity, reducing the cost of trade, enhancing the joint stewardship of our envi-

¹³ U.S. Trade Balance With China, <http://www.census.gov/foreign-trade/balance/c5700.html#2004> (last visited Oct. 31, 2005).

¹⁴ See generally Press Release, Joint Statement by President Bush, President Fox, and Prime Minister Martin (Mar. 23, 2005), available at <http://www.whitehouse.gov/news/releases/2005/03/20050323-2.html> (stating that since September 11, 2001 the three nations have taken important steps to create dynamic trade relationship as well as address the threat of terrorism).

ronment, and facilitating agricultural trade while creating a safer and more reliable food supply and protecting our people from disease.

Organizationally, the Secretary of Commerce, Carlos Gutierrez, his Canada counterpart, Minister of Industry David Emerson, and his Mexican counterpart, Secretary of the Economy Fernando Canales, are responsible for the prosperity component of the SPP. On the security side, Secretary Chertoff of our Homeland Security Department and his counterparts are responsible. The leaders asked the Secretary of State, Condoleeza Rice, and her Canadian and Mexican counterparts also to play a role of ensuring that the two components are integrated, and that the SPP advances strong relations with Mexico and Canada.

The SPP is intended to complement rather than to replace existing bilateral and trilateral mechanisms. It will provide a leader-level umbrella for ongoing and new trilateral and bilateral initiatives, and give existing mechanisms additional momentum. It will create new mechanisms, where necessary and appropriate, to accomplish specific goals.

The initiative will address the priorities of the North American people and businesses. It will focus on projects that do not require immediate legislative action. It is designed to encourage trilateral actions while permitting any two of the countries to move forward on an issue alone. It will exclude certain bilateral issues, such as immigration and trade disputes that will be handled through other existing channels.

The SPP is designed to be ongoing, yielding continual success by establishing leader-level goals and objectives that are specific, measurable, achievable, time-bound, and results-oriented. The security aspects of the SPP will enhance and rearticulate our ongoing security efforts, such as through the Smart Border Accord and the Border Partnership Action Plan.¹⁵

It will build on our long-standing trade and economic relationships that include NAFTA and P4P as well as the Canada-Mexico partnership, and we hope it will energize cooperative relations in other areas where there is extensive interaction already, such as environmental protection and public health matters.

As I noted earlier, the security working groups will be chaired by Secretary Chertoff from the Department of Homeland Security. There are currently established three separate working groups under that umbrella. These groups, among other things, will work on developing biometric standards for passports and other deployments, joint strategies to respond to emergencies, and strengthened information sharing capabilities to combat terrorism.

¹⁵ Press Release, The White House, U.S. Dept. of State, Fact Sheet: Security and Prosperity Partnership of North America (Mar. 23, 2005), available at <http://www.whitehouse.gov/news/releases/2005/03/20050323-4.html>.

At the Commerce Department, our Bureau of Industry and Security, which handles export control matters,¹⁶ will begin technical exchanges with our North American partners to examine ways to improve our common export control systems. This includes an effort to ensure that we have compatible national and international export control systems, as well as to ensure that North American countries are not used to divert sensitive Canadian, Mexican, or American goods or technologies to mutually agreed prohibited countries or end users.

On the prosperity side, Secretary Gutierrez and his counterparts will focus on promoting growth, competitiveness, and the quality of life. And in that regard, we couldn't hope to have a more appropriate person than Secretary Gutierrez to lead on the U.S. side. He has experienced firsthand in his long business career many of the regulatory barriers that businesses face on a daily basis.

The Secretary, of course, spent his career at the Kellogg Company.¹⁷ He often tells a frustrating story of how cereal producers must run separate production lines for four to five breakfast cereals sold in the U.S., Canadian, and Mexican markets, because each country will accept only its own standards in this area.¹⁸

Instances of similar inefficiencies are legion. American baby food companies, for example, cannot export baby food to Canada using their current packaging because Canadian regulations only permit two container sizes,¹⁹ sizes that are not used in the U.S.. Companies that sell medical devices in Canada and the United States are subject to two regulatory audits: one by the Canadian authority and one by the Food and Drug Administration.²⁰ Washing machine manufacturers must have the same product tested by each Mexican importer,²¹ resulting in redundant and unnecessarily burdensome costs and delays. Even a shipment of beer might be subjected to more stringent requirements at Nuevo Laredo than Tijuana because of inconsistent border enforcement procedures.

¹⁶ U.S. Dept. of Commerce, Bureau of Industry and Security, *available at* <http://www.bis.doc.gov/about/index.htm> (last visited October 31, 2005).

¹⁷ http://www.commerce.gov/bios/Gutierrez_bio.htm (last visited Oct. 30, 2005).

¹⁸ The Embassy of the United States of America, Canada, *available at* http://www.usembassycanada.gov/content/can_usa/ustr_tradeestimates_2005.pdf (last visited Nov. 1, 2005);

¹⁹ *Id.*

²⁰ U.S. Food and Drug Administration, Exporting Medical Devices, *available at* <http://www.fda.gov/cdrh/devadvice/39.html> (last visited Nov. 1, 2005).

²¹ See generally *Efficiency Standards for Appliances in Mexico*, *available at* http://www.ises.org/sepconew/Pages/Efficiency_Standards_MX/document.pdf (last visited Nov. 1, 2005).

These examples illustrate why the SPP is an important initiative. There are currently nine working groups under the prosperity pillar. They are: manufactured goods, e-commerce and information and communications technologies, energy, transportation, environment, food and agriculture, rules of origin, financial services, and business facilitation.

The three countries are discussing the creation of additional working groups as information is gathered about other problem areas. In addition to working on standards and regulatory issues, the prosperity working groups will seek to foster cooperative work to expand existing areas of commerce. For example, we will work on the collaborative development and deployment of renewable energy technologies, on enhancing natural gas supplies, and on increasing the North American air space capacity. In addition, the prosperity working groups will seek to enhance the quality of life for all citizens of North America.

We can do this by expanding cooperative work to improve air quality, including reducing sulfur in fuels, mercury emissions and marine emissions. We can enhance water quality by working bilaterally, trilaterally, and through existing mechanisms such as the International Boundary and Water Commission. We will focus on food supply issues while facilitating agricultural trade by pursuing a common approach to food safety.

We will seek to protect our people better from disease by enhancing public health, for example through better cross-border coordination regarding infectious diseases surveillance. And we will seek to improve management of distressed marine fisheries and to combat invasive species through greater border cooperation programs.

The leaders directed the working group chairs to develop specific work plans and to report back to them by June 23rd, 2005. This report will have concrete deliverables and specific timetables that reflect in-depth trilateral consultation and outreach for input from stakeholders that will be occurring between now and the time the report is delivered.

The report will also focus on what we are calling early harvest results. We are going to target rolling deliverables every three to six months throughout the initiative. Once the initiative is launched, the working groups will report to the leaders semi-annually.

The Department of Commerce on the prosperity side has initiated private sector consultations to be completed by the last week in April. I believe our counterparts in Canada and Mexico are on a similar path.

We would welcome any ideas that you may have to be incorporated in the SPP. You can forward your input to SPP@ita.doc.gov, even after the April 29 deadline. We will welcome ongoing comments and suggestions, because this is an initiative that has no sunset date.

Canada and the United States are two great nations that share a vast border and are bound by a common commitment to protect our citizens, to pro-

mote democracy, human rights, prosperity, economic opportunity, and the quality of life. The SPP represents the next logical step in the long evolving translation of those deep ties into a virtual borderless sphere of economic activity.

In a world of ever intensifying competition, Canada and the United States, together with our southern neighbor Mexico, must strive to create an unparalleled platform for doing business globally.

As President Bush, Prime Minister Martin, and President Fox said in Texas, "in a rapidly changing world, we must develop new avenues of cooperation that will make our open societies safer and more secure, our businesses more competitive, and our economies more resilient."²² That is the goal and the promise of the SPP, and we look forward to your ideas to make that happen.

Thank you, Henry, for the time.
(Applause.)

²² Press Release, The White House, U.S. Dept. of State, Fact Sheet: Security and Prosperity Partnership of North America (Mar. 23, 2005), *available at* <http://www.whitehouse.gov/news/releases/2005/03/20050323-4.html>.